



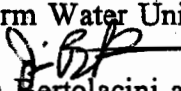
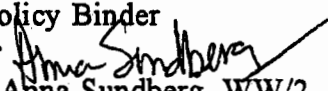
George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

DATE: March 16, 1995

TO: Storm Water Unit Policy Binder

FROM:  
Jim Bertolacini and Anna Sundberg, WW/2

SUBJECT: Applicability of Chapter NR 216 Subchapter III to Mill and Crush Operations

Anna Sundberg and Jim Bertolacini of the Storm Water Unit have been working with representatives of the Wisconsin County Highway Association (WCHA) to develop an erosion control plan that can be used by county highway departments to satisfy the requirements of Chapter NR 216, Wis. Adm. Code, Subchapter III - Construction Site Storm Water Discharges. During our discussions, the WCHA representatives asked us to provide an interpretation of "land disturbing construction activity" as defined in NR 216 and whether this definition would include a strictly mill and crush operation used during a road resurfacing project.

"Land disturbing construction activity" is defined in s. NR 216.002 (12), Wis. Adm. Code, as "any man-made change of the land surface resulting in a change in the topography, existing vegetative and non-vegetative soil cover or the existing soil topography which may result in storm water runoff and lead to increased soil erosion and movement of sediment into waters of the state." Land disturbing construction activities include but are not limited to clearing and grubbing, demolition, excavating, pit trench dewatering, and filling and grading activities. The issue here is whether a mill and crush operation falls under the definition of "land disturbing construction activity."

During a road resurfacing project, the existing asphalt pavement may be milled down to its concrete or gravel base and the removed asphalt crushed and re-applied to the road surface or incorporated into the base material before resurfacing. The mill and crush operation does not expose the soil beneath the existing road, nor does it involve soil disturbance to the road shoulder. Under this scenario, a mill and crush operation would not constitute a "land disturbing construction activity", since the operation does not result in a change of the land surface resulting in a change in the topography, existing vegetative and non-vegetative soil cover or the existing soil topography. Additionally, the Department of Transportation (DOT) considers mill and crush operations to be road maintenance as long as soil is not exposed and the road shoulder is left undisturbed. Consequently, the DOT will not regulate mill and crush operations under Chapter TRANS 401, Wis. Adm. Code, for projects that it administers.

Given the above circumstances, we recommend that a strictly mill and crush operation not be considered "land disturbing construction activity", and therefore, not subject to the requirements of NR 216 Subchapter III. This policy will pertain only to the applicability of NR 216 Subchapter III, and does not relieve the landowner or contractor from other applicable permits and approvals or prevent the Department from taking action under other environmental programs where appropriate.

Approved:

Jack G. Salter
Storm Water Unit Leader

3/16/95
Date

Wanda Kopecky
Wastewater Bureau Director

3/24/95
Date

cc: Mike Neuman, EA/6
Dan Graff, LC/5
District Wastewater Supervisors
District Environmental Impact Coordinators
Anne Holy, NWD, Superior Office